***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

–

W.P.No.24929 of 2004

% 15-02-2005

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Between:

Mr. K. Jawaharlal, S/o. Sri K. Satyanarayana,

R/o. Plot No.7, Padmavathi Colony, Nalgonda District, A.P.

.... PETITIONER

AND

1. The State of Andhra Pradesh, Rep.by its Secretary,
Department of Law, Secretariat, Hyderabad.

2. The Collector cum District Magistrate, Nalgonda District.

...RESPONDENTS

! COUNSEL FOR PETITIONER: Mr.R.RAGHUNANDAN

^ COUNSEL FOR RESPONDENTS: G.P. FOR HOME

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> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO: 24929 of 2004

Between:

Mr. K. Jawaharlal, S/o. Sri K. Satyanarayana,
R/o. Plot No.7, Padmavathi Colony, Nalgonda District, A.P.

... PETITIONER

AND

1 The State Of Andhra Pradesh, Rep. by its Secretary, Department

of Law, Secretariat, Hyderabad.
2 The Collector cum District Magistrate, Nalgonda District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to grant an order, direction or writ, more so in the nature of Writ of Mandamus, declaring the action of the second respondent in removing the name of the petitioner from the panel of advocates recommended by the District Judge, as illegal, arbitrary and violative of Article 14 of Constitution of India and provisions of A.P. Law Officers (Appointment and Conditions of Service) Instructions, 2000 and provisions of Criminal Procedure Code, 1973 and without jurisdiction and consequently direct the first respondent to consider the name of the petitioner along with other names in the panel sent by the District Judge to the second respondent for appointment of Additional Public Prosecutor to the court of the First Additonal District Judge, Nalgonda.

Counsel for the Petitioner: MR.R.RAGHUNANDAN

Counsel for the Respondents: G.P. FOR HOME

The Court, at the admission stage, made the following:

ORDER:

The petitioner is a practicing advocate. He challenges the procedure adopted by the 2nd respondent in preparing the panel of advocates, for the purpose of appointment of an Additional Public Prosecutor, for the Court of First Additional District and Sessions Judge, Nalgonda.

The petitioner contends that his name figured in the panel that was forwarded by the learned District and Sessions Judge

(for short 'the Sessions Judge') to the 2nd respondent, and thereafter it was removed by the 2nd respondent, while forwarding the list to the first respondent for consideration. He contends that the procedure adopted by the 2nd respondent is contrary to the provisions of Section 24 of the Criminal Procedure Code.

The 2nd respondent filed a counter affidavit. He narrated the sequence of events that have ensued ever since he called for a panel of advocates from the learned

Sessions Judge, for the purpose of forwarding the same to the first respondent. He referred to the various steps including those under which the learned Sessions Judge forwarded the list more than once as well as sending up of bio-data of six more advocates. It is ultimately stated that on a consideration of the various names that have been forwarded by the learned Sessions Judge, a list of five advocates has been forwarded to the first respondent.

Sri R. Raghunandan, the learned counsel for the petitioner submits that Section 24 of Cr.P.C., mandates a consultation between the 2nd respondent and the learned Sessions Judge, whereas, no such consultation has taken place in the instant case. According to him, forwarding of as many as eleven names by the learned Sessions Judge and choosing five out of them by the 2nd respondent cannot be said to be a consultation within the meaning of Section 24 of Cr.P.C.

Learned Government Pleader for Home, on the other hand, submits that the 2nd respondent has followed the procedure prescribed under Section 24 of Cr.P.C., scrupulously, and the list of five names has been prepared only by including the names of the advocates forwarded by the learned Sessions Judge.

The Office of the Additional Public Prosecutor for the Court referred to above, fell vacant on 25-09-2004, on account of expiry of the term of the previous incumbent. Much before the expiry of the term, the 2nd respondent addressed a letter, dated 04-09-2004, to the learned Sessions Judge requesting him to send a panel of names of advocates for consideration for appointment as Additional Public Prosecutor. In response to the same, the learned Sessions Judge forwarded a list of five names through his letter dated 4-10-2004; the name of the petitioner is figured in that. Once the panel was received, the 2nd respondent ought to have consulted the learned Sessions Judge and finalized it. If he had any objections as to the names, be it for inclusion or exclusion, he should have sorted it out in such consultation. Instead, the 2nd respondent entertained representations from certain advocates and forwarded the same to the Sessions Judge for inclusion in the panel. Such a step is contrary to the very purport of Section 24 of Cr.P.C. Instead of adhering to the panel sent by

him, the learned Sessions Judge forwarded a revised panel on 18-10-2004. Obviously with a view to please everybody, he forwarded a list of bio-data forms of six more advocates. At this stage, the 2nd respondent forwarded the second panel on 22-12-2004, and ignored the candidates whose bio-data was forwarded to him.

The whole episode discloses lack of basic understanding about the procedure to be followed in the matter of preparation of panel and forwarding the same to the Government for consideration. Sub-section (4) of Section 24 Cr.P.C., is very clear, and the panel of names of persons is to be prepared by the 2nd respondent, in consultation with the learned Sessions Judge. Except exchange of list of names between the first respondent and the learned Sessions Judge, no consultation, worth its name, appears to have taken place. The panel should emerge as a result of consultation. Once the 2nd respondent received a panel from the learned Sessions Judge, he ought to have finalized the same in consultation with the latter. During that process, it was permissible for them to include or exclude any names. Instead, both of them have undertaken to forward the bio-datas or applications received by them from advocates, to each other. This has obviously resulted in a fluid situation. As a result, it cannot be said that there was any effective consultation between the 2nd respondent and the learned Sessions Judge.

For the foregoing reasons, the writ petition is allowed and it is directed that the first respondent and the learned Sessions Judge, Nalgonda, shall prepare a panel of advocates, who according to him, are competent to be considered for appointment as Additional Public Prosecutor, and forward the same to the first respondent, within a period of four weeks from today. The proceedings, which have taken place so far, shall stand nullified. This order shall not be treated as indicating the opinion of the Court as to the eligibility or otherwise of the persons included in the panel or outside it. There shall be no order as to costs.

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15-02-2005

Note: Furnish C.C. in three days.

B/o.

LSK/TS

ASSISTANT REGISTRAR

//**TRUE COPY**//

SECTION OFFICER.

Fair copy to the Hon'ble Mr.Justice L.Narasimha Reddy

(For his lordships kind perusal)

To

1 The Secretary, State Of Andhra Pradesh,
Department of Law, Secretariat, Hyderabad.
2 The Collector cum District Magistrate, Nalgonda District.

3 Two C.Cs. to the Government Pleader for Home, High Court Buildings, Hyderabad. (O.U.T.)

4 Two C.D. copies.

5 The under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

6 The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

7 Eight L.R. copies.